IN THE

Supreme Court of the United States

October Term, 1923.

No. 109.

GUARANTY TITLE & TRUST CORPORATION, Receiver of VUE DE L'EAU COMPANY, a corporation, Intervenor, Appellant,

v.

THE UNITED STATES.

REPLY BRIEF ON BEHALF OF NORFOLK-HAMPTON ROADS COMPANY, APPELLEE.

Counsel for Appellant in his reply brief has in some instances introduced new matter not covered by his original brief and in others has changed front. For this reason we feel impelled to reply. This we shall do as briefly as possible, and in so doing, we crave the indulgence of the Court.

Open and Notorious Possession.

In his original brief counsel attacked the sufficiency of Appellee's possession on two grounds only.

Thus at page 13 he says:

> "We submit that two of the essentials of adverse possession were not present: (1) Prior to 1907 it was never in actual possession of this land; and (2) at no time did it have a claim of right or title thereto."

These contentions were fully dealt with in our brief.

In his Reply he now asserts that Appellee's possession is not shown to be *open*, *notorious* and *habitual*.

That a possession is *open* and *notorious* is in the nature of a conclusion from facts *proved* as to the character of the possession and the nature of the acts of dominion exercised over the property. Hence it was not necessary that the Court of Claims state in express terms that Plaintiff-Appellee's possession was open and notorious. It pursued the proper course in stating the fact of possession and the nature and character of the acts of dominion exercised over the property by the Plaintiff-Appellee.

As to what constitutes open and notorious possession, it is said in Corpus Juris, Vol. 2, p. 79, that

> "The general rule is that it is sufficient if the land is appropriated in such a manner as to apprise the community that the land is in the possession and enjoyment of the person claiming it, and that openness and exclusiveness are shown

> by such acts as will ordinarily be performed by the true owner in appropriating the land and its avails to his own use and preventing as far as practicable, all others from using it. * * * It is not essential that the occupation should be such as to inform a passing stranger that some one is asserting title to it."

See also *Lusk* v. *Pelter*, 101 Va. 790.

The facts found by the Court below show conclusively that Plaintiff-Appellee's possession was open and notorious.

Please see discussion at page 21 of our brief.

The findings also show that the dominion exercised by Norfolk-Hampton Roads Company over this property was not only habitual, but continuous, and its possession exclusive from 1899 until the property was taken in 1917. See Finding VII.

Counsel, at page 12 of his reply brief, says he does not see the relevancy of the fact that from 1874 until 1921, the Vue de L'Eau Company was dormant. For one thing, it shows that the Vue de L'Eau Company was never in possession of this property at any time after the year 1874.

Claim of Right.

In his original brief, page 27, counsel said:

> "Norfolk Hampton Roads Company had no claim of right or title to this land; but was a wrongdoer from the beginning."

Thus clearly indicating that a possession originally wrongful could never ripen into title to; other words, that a claim of right must have been a *rightful* claim.

In his reply, page 15, he shifts his position, conceding now that claim of right does not mean *rightful* claim.

But he contends, and here for the first time, that the Court of Claims expressly found that Norfolk-Hampton Roads Company did not hold possession under a claim of right.

In support of this he relies upon the first paragraph of Finding VII., where the Court said that upon purchasing its extensive land holdings contiguous to the "Prize Lot Reserve," in 1899, the Norfolk-Hampton Roads Company,

> "without any right, title, or interest, or claim of right, title or interest, in or to the lots of land of said Prize Lot Reserve, and with full knowledge of the fact that it had no claim of right, title or interest in or to any part of said lots or land, deliberately set about trying to acquire title to said lots and land by adverse possession.

The Court here was consciously and expressly dealing with the situation existing at the time of the purchase by Norfolk-Hampton Roads Company of the contiguous lands in 1899, the situation as it was when Appellee resolved to obtain title by adverse possession, and before it took possession.

This statement means nothing more than that when Norfolk-Hampton Roads Company bought the contiguous lands in 1899, it had no title to the Prize Lot Reserve, and knew that it had none.

Certainly it knew it. This was the reason for its determination to acquire the title. Moreover it knew that the only way it could acquire title was by adverse possession,the owner of the record title having then been dormant for a quarter of a century.

Hence it was that the Appellee immediately set about acquiring the title by adverse possession.

The remainder of Finding VII. shows that immediately thereafter and in 1899, Plaintiff-Appellee took possession of the land in dispute and asserted a claim to it in the most public manner possible by acts of record and otherwise.

> "As a general rule the claim of ownership need not exist at the time of entry and, where a person after entry sets up a claim of ownership, his possession may then become adverse, although the entry in the first instance was without claim of ownership."

2 Corpus Juris, page 129.

In the instant case the claim of ownership was immediately asserted in 1899. Thenceforward, until the Government took the property in 1917, the land of the Reserve was held out and treated by the Plaintiff-Appellee as though it belonged to itself. So generally was its claim and title recognized in the community that the Jamestown Exposition Company, in 1907, took a lease of the property from this appellee. Finding VII.

We have not conceded, as counsel at page 15 of his brief states, that a disseizor in order to acquire title by adverse possession must "*have* a claim of right." On the contrary, as we expressly stated in our brief at page 45,

> "A claim of right or title in the sense of the law is nothing more than an intention existing in the mind of the disseizor to hold the property as his own; that it is unnecessary to have a valid claim or believe he has, or to *have* any claim at all. The claim consists of his own intention to hold, and this need not be openly proclaimed or expressed; but is implied in his act of holding the property as his own without leave or license from another."

In the case of *Probst* v. *Board of Missions*, 129 U. S. p. 182, cited in our original brief, it was contended as it is in this case, that the disseizor was without claim of right. The trial court had instructed the jury that

> "Unless the defendant had a *right* to the possession of such lands when he took possession of them, he has no right now; time never makes a wrong right."

Mr. Justice Miller in holding this erroneous, said the right given by the statute of limitations

> "does not depend upon and has no necessary connection with the validity of the claim under which that possession is held. * * *
>
> Nor is it necessary that the defendant shall have a paper title under which he claims pos-

session. It is sufficient that he asserts ownership of the land and that this assertion is accompanied by an uninterrupted possession."

The case is so instructive and so fully sustains our contentions as to the character of the claim that will support adverse possession that we respectfully invite a full reading of Mr. Justice Miller's opinion.

Very respectfully submitted,

H. H. RUMBLE,
Attorney for Norfolk-Hampton Roads Company, Plaintiff-Appellee.

Of Counsel,

RUMBLE & RUMBLE,
Norfolk, Va.

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GUARANTY TITLE & TRUST CORPORATION, Receiver of VUE DE L'EAU COMPANY, a corporation, Intervenor, Appellant

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THE UNITED STATES.

REPLY BRIEF ON BEHALF OF APPELLANT

E. R. F. WELLS,

Attorney for Guaranty Title & Trust Corporation, Receiver of Vue de L'Eau Company, Appellant.

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REPLY BRIEF ON BEHALF OF APPELLANT

The limited time at our command since receiving a copy of the appellee's brief renders impossible an extended reply brief. We shall therefore consider only some of the main contentions advanced by the appellee.

A Question of Ownership:

It is contended by counsel for the Norfolk-Hampton Roads Company, plaintiff-appellee, (Appellee's Brief,

7, 8) that even if the actual possession of said Company did not begin until the year 1907, still in disturbing said Company's possession and in depriving said Company of the possession and use of said property and of the improvements which it may have made thereon after that date, the Government took from that Company property of value for which it was entitled to compensation. He then adds: "A judgment in its (said Company's) favor therefore could not be wholly wrong *even if the naked legal title had been in Vue de L'Eau Company at the time of the taking.*" (Italics ours.)

This contention is not sound. If actual possession of this land by Norfolk-Hampton Roads Company did not begin until the year 1907, then in June, 1917, when the Government took the property, that Company had not acquired title to it, had no right to the possession thereof, and was a mere trespasser. If it had made any improvements on the property (which the Court of Claims does not find as a fact) these improvements belong to the rightful owner of the land. Therefore, if we assume that at the time this property was taken by the Government in 1917 the Vue de L'Eau Company had the legal title thereto, then the Norfolk-Hampton Roads Company, although wrongfully in possession of the property, would not be entitled to any judgment whatsoever.

This whole case hinges on the question, "*Who was the owner of this property when the Government took it in June, 1917?*"

The Vue de L'Eau Company had a deed to it and was certainly the record owner; furthermore, it was in constructive possession of it unless it had been ousted

by the actual adverse possession of some one else. Unless the Norfolk-Hampton Roads Company had been in actual adverse possession of this land continuously for fifteen years prior to June, 1917, it had no title to it and no right to the possession of it.

No Actual Possession:

It is further contended by counsel for the plaintiff-appellee (Appellee's Brief 28) that the Court of Claims made a general finding that it (Norfolk-Hampton Roads Company) was in *actual possession* of said land from 1899 until it was taken by the Government in 1917, and that its specifications of the various acts done by said Company was simply an *enumeration* of *some* of its acts of ownership, which acts were mentioned simply as *illustrations* of the character of the dominion which said Company exercised over said property.

In passing, we suggest that this statement comes pretty close to being a concession that the specific acts mentioned by the Court of Claims are insufficient in and of themselves to constitute actual possession. His argument seems to be that this Court must assume that the Court of Claims held back and failed to mention other acts which might be sufficient to justify its conclusion.

Assuming, however, that the Court of Claims did make a general finding that said Company was in actual possession of the land during the entire period from 1899 to 1917, such a general finding would not be conclusive on the appellant. In *United States* v.

Pugh, 99 U. S. 265, it was held that if there was any doubt as to the legal effect of the facts found by the Court of Claims, it is the duty of that Court, when requested, to so frame its findings "as to put the doubtful question into the record."

In the case at Bar the "*doubtful question*" is whether the acts done by the Norfolk-Hampton Roads Company constituted actual possession. If the Court of Claims had contented itself with a general finding that said Company had actual possession of this land for the statutory period of time, then the appellant would have had the right to request said Court to state specifically the several acts done by said Company which it found constituted actual possession, and under the ruling in *United States* v. *Pugh* (supra), it would have been the duty of that Court to have complied with this request. But in the case at Bar, the Court of Claims did not simply make a general finding as to actual possession, but it specified—as was its duty to do—the various acts done by said Company, and we must assume that, in fairness to the appellant, it specified *all* of these acts so that the appellant could have the benefit of the judgment of this Court, on appeal, as to whether or not these acts were sufficient to constitute actual possession of the land.

Therefore, we do not think it is correct to say that the Court of Claims in its findings of fact simply enumerated *some* of these acts of ownership as *illustrations* of the character of the dominion exercised by the Norfolk-Hampton Roads Company.

In addition to this, we call attention to the fact that the general finding by the Court of Claims that the Norfolk-Hampton Roads Company treated this land "as though it belonged to" itself, does not, under our Virginia decisions, justify the conclusion that it was in actual adverse possession of the land. This was decided in *Taylor* v. *Burnsides*, 1 Gratt. (42 Va.) 165. We refer to our discussion on this point on pages 25 and 26 of our opening brief.

We shall, therefore, proceed on the assumption that the Court of Claims in its findings of fact specified *all* of the acts done by the Norfolk-Hampton Roads Company in its effort to obtain title to this land by adverse possession.

On pages 20 to 26 of our opening brief we have discussed each separate act done by this Company with reference to this land and we reached the conclusion that prior to the year 1907 these acts, all taken together, did not constitute actual adverse possession. We refer to the findings of the Court of Claims as tabulated by us on pages 8 and 9 of our opening brief, and to our discussion of same on pages 20 to 26 of the same brief. It is apparent from these findings that if the Norfolk-Hampton Roads Company was in actual adverse possession of this land prior to 1907 it was by virtue of the following three acts found by the Court of Claims:

> "(c) In the development of its said property, streets were opened and graded through the land of said Reserve;
>
> (d) timber was cut therefrom and used or marketed by the Company;

(e) and bulk-heads were built by the Company in front of the property to protect it from erosion by the waves and tides."

These are the only acts which the Court of Claims found said Company did on this land prior to the year 1907. And it follows that if said Company can be considered as having had actual possession of this land prior to 1907 it must be by virtue of these three acts. Our contention is that under the Virginia law these acts do not amount to actual possession. It must be borne in mind that under the decisions of the Virginia Court acts of ownership must be "open, notorious and *habitual*" before they can assume the proportions of actual possession.

The above specified acts certainly do not comply with this test.

The Court finds that streets were opened and graded through this land. But it fails to find when this work was commenced, how long it continued or the extent of the work itself.

The Court finds that timber was cut from the land and used or marketed by said Company. But it does not find when this cutting was commenced, the extent of it, whether timber was cut from the whole land or from only certain portions of it, or whether the cutting was *occasional* or *habitual.*

The Court finds that bulk-heads were built by the Company *in front* of this property to protect it from waves and tides. But it did not find when these bulk-heads were built, or how often they were put there, or anything else about them.

All of these matters are vital considerations, because the mere facts that some timber was cut at some time, that some streets were at some time opened on some portions of this property, that some bulk-heads were built at some time in front of this property—do not *per se* constitute *actual possession of the property.* In our opening brief, pages 15 to 24, we have referred to various Virginia and West Virginia cases deciding what constitutes actual possession, and mentioning various acts of ownership which are not sufficient for this purpose. In particular, we refer to those cases where it was decided that *occasional* cutting of timber on land was not sufficient; that asserting title to land and forbidding trespasses thereon were not sufficient; that fishing and hunting on a pond and renting boats to others for that purpose were not sufficient; that ranging cattle over lands, and cutting grass therefrom and hauling it away to be used as manure on other lands were not sufficient; that occasional acts of trespass, such as cutting trees, stripping bark, making surveys, tapping sugar trees, piling wood thereon, digging and selling sand therefrom were not sufficient.

Under Rule I (par. 2) of this Court relating to appeals from the Court of Claims, the findings of fact are in the nature of a *special verdict*, and should be sufficient in and of themselves to justify the conclusion of law.

In the case of *Ward* v. *Cochran*, 150 U. S. 597, this Court held that where a *special verdict* was rendered in an action of ejectment, that verdict must contain *all* the facts essential to entitle the claimant

by adverse possession, to a judgment. And the verdict was held to be insufficient to sustain the defendant's title by adverse possession, because it did not find that such possession was *actual* and *exclusive*. Justice Shiras, in delivering the opinion of the Court, cited with approval the case of *Jackson* v. *Berner*, 48 Ill. 203, where it was held that an adverse possession could not be made out by inference, but should be established by clear and positive proof. This case further decided that a special verdict could not be pieced out and the missing facts supplied by inference, or even by reference to other parts of the record.

In the case at Bar we contend that the *special verdict* (findings of fact) of the Court of Claims does not show that the appellee's possession was *actual*, and this missing fact cannot be supplied by inference.

In the case of *United States* v. *Ross*, 92 U. S. 281, this Court held that the Court of Claims was not authorized to conclude, as matter of law, in the absence of evidence, that certain property was delivered by a military officer to a treasury agent and sold by the latter and the proceeds converted into the treasury; that the presumption that public officers have done their duty does not supply proof of independent facts.

By the same token, we submit that this Court is not justified in assuming that the opening of streets, cutting of timber and building of bulk-heads were of such a character and continued for such a length of time as to amount to *actual* possession.

Bear in mind that prior to 1907 no portion of this land was inclosed, no portion of it was occupied by any one, no portion of it was in cultivation, but prac-

tically all of it was in forest growth, and there were no buildings or improvements of any kind on it.

Bear in mind also that, according to the findings of fact, the Norfolk-Hampton Roads Company knew that it had "no claim of right, title or interest in or to any part of said lots or land," and that it "*deliberately* set about trying to acquire title to said lots and land by adverse possession."

In these circumstances, it is no hardship on the Norfolk-Hampton Roads Company to require it to prove clearly every essential element necessary to adverse possession. It is not the case of an innocent purchaser, or of one misled by the silence of the true owner into thinking that certain land belonged to it; but here the Norfolk-Hampton Roads Company knew from the outset that it did not have any title to this land but that another party owned it, and, with these facts before it, it *deliberately* attempted to deprive the true owner of its land by adverse possession. We ask that the strict letter of the law be imposed.

Counsel for the plaintiff-appellee seems to think that this Court should supply the omissions in the findings of the Court of Claims and he cites two cases to which we will now refer.

In *United States* v. *Pugh*, 99 U. S. 265, which was an appeal from the Court of Claims, the ultimate fact to be determined was whether the proceeds of the sale of certain captured property belonging to the claimant had been paid into the treasury. No direct proof of that was given, but if it was shown at all it was by way of inference from certain circumstantial facts established by the evidence. These circum-

stantial facts were set forth in the findings of the Court of Claims upon which its judgment was rendered, and the question the Supreme Court was called upon to decide was whether or not these facts were sufficient to support the judgment.

Chief Justice Waite, in delivering the opinion of the Court, made this succinct statement:

> "The inquiry thus presented is as to the legal effect of facts proved, not of the evidence given to make the proof; and the question of practice to be settled is, whether, under our rule, the judgment of the Court of Claims as to the legal effect of what may, perhaps not improperly, be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal."

Further on in the opinion he said:

> "To avoid misapprehension in the future, we take this opportunity to say, that we not only think such a judgment may be reviewed here if the question is properly presented, but that when the rights of the parties depend upon circumstantial facts alone, and there is doubt as to the legal effect of the facts, it is the duty of the court, when requested, to so frame its findings as to put the doubtful question into the record."

(This sentence immediately precedes and explains the quotation made by the appellee on page 29 of its Brief.)

In the case of *United States* v. *Andrews*, 179 U. S. 96, cited by the appellee, the Court of Claims had made a finding that a certain trail, known as the Chisom trail, was an *established trail* en route from Texas to a market in Kansas. A judgment was rendered against the United States and on appeal to this Court the Government contended that the finding of the Court of Claims just referred to did not mean the trail was a *legal* trail or had been *legally* established. But this Court held that the finding by the Court of Claims that the trail was an *established* trail was equivalent to a finding that it was a *lawfully* established trail permitted by the laws of the United States. The gist of the decision is found in the following sentence: "An established trail, in this case, means a legally established trail, and we must presume the Court below so intended."

(The quotation from the opinion which appears on page 31 of the appellee's Brief stops just short of this sentence, which clearly explains the decision.)

From this it appears that this Court simply construed the language of the finding made by the Court of Claims. It has no bearing whatsoever on this case.

In the case at Bar, we are not asking this Court to construe the language used by the Court of Claims in its findings—the language is clear enough—but we are asking this Court to decide as a matter of law that the findings made do not justify the conclusion reached.

Status of Vue de L'Eau Company:

At various places in his brief counsel for the appellee refers to the fact that after 1874 the Vue de L'Eau

Company became dormant and remained "wrapped in slumber" until 1921, after the United States took title to and possession of the property. It is conceded by him and was expressly found as a fact by the Court of Claims that this Company was never dissolved, never surrendered its charter and is still a live corporation; that its legal existence was recognized by the Virginia Court on April 12, 1921, when it appointed the appellant its receiver.

We do not quite understand the relevancy of these repeated references by counsel to the dormancy of the Vue de L'Eau Company. It would seem that the learned counsel for the appellee seems to think that because the Vue de L'Eau Company was asleep the Norfolk-Hampton Roads Company was justified in taking its property. This contention cannot be sound. We have never before heard it contended that despoilation of a person was justified simply because he was asleep. A sleeping person is ordinarily entitled to more protection than one who is wide awake.

It is true that the Vue de L'Eau Company did, after its deed of assignment, become inactive, and so far as we know it ceased to function as an active corporation. Its officers and directors have been dead for a number of years, and the stock of the company, so far as we know, is held by their children and grandchildren. These considerations, however, have no bearing whatsoever on the question of title. It is conceded that the company is still in existence, and, under the laws of the State of Virginia, is a live cor-

poration capable of taking and holding title to land. It is also conceded that it is the true fee-simple owner of the land in controversy by virtue of title deeds, unless it has been deprived of this property by the adversary possession of the Norfolk-Hampton Roads Company.

The Norfolk-Hampton Roads Company stands at the Bar of this Court and admits that the Vue de L'Eau Company was the fee-simple owner of this tract of land, but that it, the Norfolk-Hampton Roads Company, subsequently became the owner by adverse possession. The burden of proof rests upon it to show clearly that it acquired title in this way. It must prove clearly all of the elements of adverse possession.

The fact that the Vue de L'Eau Company became inactive or dormant cannot have the effect of vesting title to its land in the Norfolk-Hampton Roads Company. Not only is this true, but the law considers that the Vue de L'Eau Company was in constructive possession of this land in virtue of its title deeds unless and until ousted by an actual adversary possession.

Says Judge Baldwin in *Taylor* v. *Burnsides*, 1 Gratt. (42 Va.) 165, 201: "There can be no ouster of the constructive possession of the older patentee, but by an *actual* adversary possession."

If the Norfolk-Hampton Roads Company was in actual adverse possession of this land for the statutory period of fifteen years before it was taken by the United States of America, then it acquired title thereto regardless of whether the Vue de L'Eau Company was active or dormant, its officers living or dead; but

if it was not in actual adverse possession of the land for the requisite period of time, then it did not acquire title thereto even if the Vue de L'Eau Company was dormant, and its officers and directors dead.

So we cannot understand how the question of the status of the Vue de L'Eau Company, its officers and directors can be injected into this case for the purpose of bolstering up the title claimed by the Norfolk-Hampton Roads Company.

Just why the stockholders of the Vue de L'Eau Company took no steps prior to April 12, 1921 (the date of the institution of the receivership suit), to assert a claim to this land, it is not material to inquire. Doubtless they knew nothing about it and were totally uninformed as to their rights. We do know that shortly after the United States of America took possession of this property the Board on Compensation for Site published an exhaustive report in which the title to this property was discussed at length.

This report was printed and given wide circulation throughout this entire community, and it is probable that the attention of some of the stockholders of the Vue de L'Eau Company, and the descendants of its incorporators, was called to this report, and that it gave them the first information they received as to the rights of the Vue de L'Eau Company to this land.

Of one thing, however, we are quite certain: The Norfolk-Hampton Roads Company cannot complain that it was misled or deceived in any way by the inactivity or dormancy of the Vue de L'Eau Company. When in the year 1899, it purchased some

adjoining property it learned of the existence of the "Prize Lot Reserve" and with full knowledge of who the true owner was, it set to work "*deliberately to acquire title to this property by adverse possession.*"

Under these circumstances surely this Court will scrutinize closely its actions and see to it that all of the elements of adversary possession are present before it will hold that the Norfolk-Hampton Roads Company deprived the true owner of its land.

No Claim of Right:

Counsel for the appellee concedes that a disseizor must have a "claim of right" before he can acquire title by adverse possession, but he says that this does not mean "*a rightful claim*" (Appellee's Brief 33).

We have never contended that a disseizor had to have a *rightful claim* before he could acquire title by adverse possession. If he had a *rightful claim* there would be no occasion to invoke adverse possession. But we do contend that under the Virginia decisions referred to on pages 27 to 31 of our opening brief, it is necessary for the claimant to have a bona fide claim of right or title. He must have a bona fide claim of some kind whether it is in fact valid or invalid.

As a matter of fact, in this case the Court of Claims has found that the Norfolk-Hampton Roads Company did not have any "*claim of right*, title or interest," to this land, and knew that it had no such claim. (Finding VII, R. 13, 14).

Counsel for the appellee seems to rely confidently on the case of *Virginia Midland R. R. Co.* v. *Barbour*,

97 Va. 118, to sustain his contention that a bona fide claim is not necessary. We do not think this case sustains his contention.

In that case a man by the name of Hicks purchased a lot of land in 1868. He became a bankrupt, and in 1878, his assignee in bankruptcy conveyed the lot to a railroad company. Hicks continued in possession of the lot and had it inclosed. The agent of the railroad company demanded possession of the lot, but Hicks told him that the lot belonged to him, and ordered him off the premises. He continued to live on the lot, cultivated it, paid taxes on it, and had it inclosed. It was decided that he had acquired good title by actual adverse possession. The court held that it was not necessary that the claim of title should be under a deed or other writing, but said: "But where it is a mere claim, that is, a mere assertion of a right, without any paper title, the adverse holding is limited to the actual inclosure of the claimant."

In other words, the court held that there must be some claim of right or title to the land, whether valid or not.

Judge Buchanan, in delivering the opinion of the Court, said that it clearly appeared from the evidence that Hicks "did claim the land as his own."

In the case at Bar the Norfolk-Hampton Roads Company never had any claim of right or title to this land. It simply attempted to acquire title by adverse possession.

Suppose, in the year 1906, a representative of the Vue de L'Eau Company had demanded of the Norfolk-Hampton Roads Company by what right or title it

was exercising acts of ownership on the land. There could have been only one truthful answer, "By no right or title whatsoever, but we are simply attempting to acquire title by adverse possession."

The Question of Damages:

In concluding his brief, counsel for the appellee asks this Court to affirm the judgment of the Court of Claims and to render a judgment against the appellant and the surety on its bond for damages and costs. He says that the damages awarded should be sufficient to cover the interest on the amount of the judgment "from the time the appeal was taken until the probable date when appropriation can be had and payment of the judgment made."

We sincerely hope that this question will not be reached in the deliberations of the Court, but that the Court will reverse the judgment of the Court of Claims and render a judgment in favor of the appellant against the United States for the sum of $33,000.00. But in the event this hope is not realized and the judgment of the Court of Claims is affirmed, it will then become necessary for the Court to consider this question of damage. A word on this subject from us may, therefore, not be amiss.

The appeal in this case was allowed by the Court of Claims on August 1, 1923 (R. 16). If this appeal had not been allowed or taken, the appellee would not have gotten its money from the United States until November, 1922, when it received payment for the land not in dispute (See Appellee's Brief 3, 4). There-

fore, interest on this money should not begin to run until November, 1922. It should cease to run on the date when this Court renders a final decision. Just as soon as a final decision is rendered by this Court in this case, the United States is free to pay the money to the person entitled thereto, and it can no longer be claimed that it was prevented by this appeal from doing so after that time.

CONCLUSION.

On the whole case we submit that the judgment of the Court of Claims should be reversed and that this Court should render a judgment in favor of the appellant against the United States for the sum of $33,000.00.

Respectfully submitted,

E. R. F. WELLS,
Attorney for Guaranty Title & Trust Corporation, Receiver of Vue de L'Eau Company, Appellant.